



# The Scottish Justices Association

Chair: Mr David Donaldson JP

Secretary: Mr Richard Scott JP - [secretary@scottishjustices.org](mailto:secretary@scottishjustices.org)

24 February 2023

## **SJA Response to the Social Justice and Social Security Committee**

Dear Ms. Don

Thank you for your letter dated 6 February 2023 requesting information on the role of Justices of the Peace (JPs) in Scotland in granting warrants to utility companies authorising them to enter customer homes for the purpose of installing prepayment meters. The SJA welcomes the opportunity to clarify the role of JPs and assist your Committee in undertaking its investigations.

It is worth noting at the outset that JPs in Scotland have not in recent years had any requests for warrants for fuel disconnection, but many for installing prepayment meters. We should also clarify that our comments relate only to warrants that are applied for to recover debt from domestic customers. Warrants for commercial and industrial customers, warrants where meter tampering or other fraudulent use of energy is suspected and warrants where access is required because of a notified health and safety issue are specifically excluded.

We will endeavour to respond fully to the four specific areas of interest you have identified and will provide additional supporting and background information where we think this will assist the Committee in its appreciation of the warrant application process.

### **Guidance**

The paperwork that you attached to your letter is a standard format that is used across all six Sheriffdoms in Scotland. It was developed by Scottish Courts and Tribunals (SCTS) staff in 2018, following revised guidelines issued by Ofgem dated 10th November 2017. We shall refer further to these Ofgem guidelines in response to the second point you raise. It must be pointed out, however, that the guidance for the consideration of warrants, as you attached, refers only to part of the process. Furthermore, the application of and adherence to that guidance will vary from JP to JP. Utility companies are required to submit each individual warrant request to SCTS staff - specifically the team of Legal Advisors (LAs) in each Sheriffdom. The LAs review each individual application and will bring to the attention of the JP any customer vulnerability that the utility company has identified on its application. They also highlight the value of the outstanding debt

and whether an unreasonable time has elapsed between the last recorded visit to the customer and the date of the warrant application.

The JP is therefore given certain details to assist in considering the warrant. The SJA wishes to stress that every single utility warrant application in Scotland is considered on its own individual merits. The agent making the application will be put on oath and all information in the application or given verbally is covered by that oath. Scottish JPs reject utility warrants on a very regular basis if they consider that a particular vulnerability has been identified, or that there is inadequate background information to support the warrant application. Unlike the situation in England & Wales, there are no collective bulk authorisations of utility warrants. Indeed, the SJA dissociates itself from the public statement issued by the Magistrates Association in England & Wales where they stated that if a utility company swore under oath that a debt existed then the Magistrate in England & Wales had no choice but to authorise the warrant application. We believe this position to be wrong on many levels, not least in terms of the relevant legislation, but in particular it undermines the entire warrant process.

In Scotland JPs are obliged to consider every warrant that is placed in front of them. They are not, however, obliged to grant any warrant. A warrant, from whatever source (police, utility company, local authority and others), is subject by the JP to an independent judicial review; whereby the rights and requirements of the applicant are weighed against the rights of and potential impact on the person being served with the warrant. Furthermore, the JP has to take cognisance of the overall public interest. This fundamental issue of judicial independence is a cornerstone of any democratic society and is taken very seriously by JPs and the SJA.

### **Identification of and Support for Vulnerable Customers**

The short answer to your question is that we do not believe enough is done at present. The current procedures are however compliant with the legislative and regulatory regime. Ofgem provide that regulatory regime and are actively reviewing it. Ofgem has issued a call for evidence and the SJA will be responding to this.

There is some background to this issue that we believe would assist the Committee in its investigations. In August 2017 the SJA responded to a consultation request from Ofgem on the installation of prepayment meters under warrant. We identified that insufficient steps were being taken by the utility companies to identify vulnerable customers and we were concerned that the utility companies were able to recover the full cost of the warrant implementation from the customer (at that time Ofgem indicated that the average cost of a warrant implementation was in excess of £600). We felt that this was particularly unfair on customers whose level of debt was significantly lower than this figure. The SJA had to persuade the Magistrates Association to support our position. As result of the consultation exercise Ofgem published its report - "Decision to modify gas and electricity supply licences for installation of prepayment meters under warrant" on 10th November 2017. We would recommend that the Committee review this report and it is available on the Ofgem website. The report does introduce a prohibition on suppliers using warrants in certain exceptional cases, specifically where the process would be severely traumatic

due to a consumers' mental capacity and/or psychological state. In addition, it introduced a prohibition on suppliers levying warrant implementation charges on consumers whose vulnerabilities had impaired their ability to engage with the supplier, thereby incentivising the utility company to pursue other debt recovery methods. The report also stipulated a cap of £150 that suppliers could impose on consumers for warrant implementation costs.

It is against these criteria that JPs review each individual warrant as far as they possibly can from the information provided by the utility companies. Unfortunately, this information is not always available; but in fairness to the utility companies if the customer fails to engage with the supplier then much of the detailed information is difficult to obtain. However, the SJA believes that the burden of establishing the existence or not of vulnerability should most definitely lie with the utility company. Utility companies are given a unique mechanism for debt recovery through the installation of prepayment meters, but normal debt recovery mechanisms are also available to them. It should not be sufficient for the company to say they are not aware of any vulnerability – they should be required to demonstrate that they have taken all reasonable steps to investigate.

It should be highlighted that all utility companies specify in their letters to customers when advising them that they intend to seek a warrant that there is a limit on the potential additional costs that will be added to the customer's account for the warrant implementation of £150. All JPs in Scotland tend, therefore, to have a self-imposed level of customer debt that must exist before a warrant would be agreed. Otherwise, the additional costs would be disproportionate to the existing debt level. Accordingly, SCTS staff tend to highlight to the JPs any warrant application where the existing level of debt is low so that the JP can assess whether the cost of the installation is proportionate. We would be surprised if any utility warrant has been granted in Scotland in recent times where the existing level of debt was less than £500.

### **Support for Customers wishing to Object to Warrant Applications**

The SJA does not have data on contested warrant applications, but anecdotally, such challenges are infrequent. The procedure is that on receipt of notification that a warrant is to be applied for, a customer wishing to contest the application should contact the utility company or the company's agent. The so-called "human rights" letter that must be issued to the customer in advance of the application being considered explains how to do this. On receipt of notification of a challenge, the application must be withdrawn by the company and will not be presented to a JP. In practice, customers who want to contest the application will often contact the court, but that is not the correct procedure. It is then up to the company to decide if they wish to pursue the warrant before a Sheriff. Again, the anecdotal evidence is that utility companies very rarely pursue an application to the point that it is heard by a Sheriff. Consequently, JPs only consider uncontested warrant applications. We can only assume that if more customers were aware that a challenge to a warrant application would in all probability result in the application being withdrawn, more would do so. Of course, if more customers challenged, then the companies might pursue more cases in the Sheriff Court. As things stand, given the clear instruction given on the face of the letter sent to customers, we conclude that many customers simply do not read the letter or

cannot understand it. They may also be fearful of engaging with the courts. There is therefore a case for people being supported to a greater extent than they currently are.

We would also identify that the utility companies frequently withdraw warrant applications right up to, and including, the date that the warrant is due to be presented to the JP. In these instances, it is normally because the customer has engaged with the utility company and has sought some other debt management resolution. In some cases, a customer is agreeable to a prepayment meter being installed and in such cases a warrant for forcible entry is neither necessary nor appropriate.

### **Suggestions for Improvement to Current Process**

This is an issue that has been a focus of the SJA for some months. In recognition of the well publicised substantial increases in energy costs, the SJA contacted Ofgem prior to Christmas 2022, to open discussions with them about how the process for the handling of utility warrants could be improved, particularly with respect to the identification of vulnerable customers and what additional support and protection could be offered to them. We have held two meetings with Ofgem staff to discuss the issue and we have outlined some proposals in this area. Our proposals seek to identify groups of customers that should be considered vulnerable. This would include groups that are essentially house bound e.g. the chronically sick or disabled, where there are children below school age, the very aged and those who require powered medical facilities in the home. In addition, we felt that specific consideration should be given to those customers suffering financial hardship or where there may be a particular need to support customers where their first language is not English. We are currently awaiting a response from Ofgem on our outline proposals.

The SJA welcomes the recent decision by the utility companies to commit to ending forced installations in vulnerable customers' homes and the temporary moratorium on forcible entry. However, there is no universally agreed definition of what constitutes a "vulnerable customer". Furthermore, there is no clarity on what information the energy company can and will provide in support of their warrant application to confirm that no vulnerability exists with the customer named in the warrant. The SJA recognises that a vulnerable status may not be a permanent situation for a customer, and that there must be a limit to the amount and content of data held by an energy company on customers under data protection regulations. We therefore propose in our contact with Ofgem that we enter into constructive dialogue with the energy companies, facilitated by Ofgem, to agree what information can be reasonably provided to JPs when considering a warrant application.

In terms of contesting warrant applications, we can only speculate on the reasons for customers doing so relatively infrequently. There may be a case for requiring the utility companies to make the instructions for contesting the application more prominent in the letter informing the customer that the application is being made.

The SJA also acknowledge that the universal introduction of 'smart meters' to all premises in the United Kingdom was expected to remove the need for warrants for debt recovery purposes.

Clearly the Covid pandemic and some challenges with the 'smart meter' technology have resulted in the delay of the installation of these meters. We would expect that the energy companies will not use warrants for the forced installation of "smart meters", and that the energy companies are encouraged to incentivise customers to adopt this technology. We believe that "smart meters" should only be installed with the agreement of the customer and at a time convenient to the customer.

It must be understood that when a warrant is issued by a JP, the warrant is to allow forcible entry to the premises. If a smart meter is already installed, the company will not need to force entry and will be able to switch a customer to a prepayment arrangement without any of the safeguards that apply when an application is made for a warrant. The independent judicial review will therefore cease to be a part of the process. That is a matter of social policy rather than a judicial issue.

The SJA has taken a very active role in helping to develop the processes and procedures for the handling of forced entry warrants in Scotland. We would wish to thank SCTS and their staff for all their support and assistance in handling these warrants. It is our objective to have clear, updated guidelines for all JPs on what are the essential criteria for consideration when reviewing each individual energy warrant. We recognise that these guidelines can only be just that, in that any JP has the right to exercise judicial independence and vary from the guidelines, but only where there is good reason to do so. In developing these guidelines, we seek to work closely with SCTS in particular, but also with Ofgem and the energy companies to establish agreed principles.

We hope that we have provided appropriate information for the Committee's investigation, but we would of course, be happy to assist further as may be required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'RCSJA', written in a cursive style.

Richard Scott

Secretary SJA